

ADEPT
Legal Commentaries

June 2003

Parliament Activity during 2-6 June 2003

9 June 2003

During this period, one single plenary session was held, following which the Parliament left for the summer break until 13 June 2003. At the session on 5 June, the Parliament examined a considerable number of legislative acts, including some of great importance.

I. Law on the Application of the Code of Civil Procedure

ADEPT Comment: On 30 May, the Parliament adopted the new Code of Civil Procedure, and the above law provides that the new Code's entry into force on 12 June 2003. The law also provides that as of the same date the old Code of Civil Procedure, approved through the Law of the SSR of Moldova on 26 December 1964, will be abrogated, all amendments and additions included, except for the regulations on the execution of court rulings, which will be applicable until the adoption of the new Code on the Execution of Court Rulings. The law also stipulates that the civil cases under investigation as of 12 June 2003 will be examined by the relevant bodies according to the procedures envisioned in the new Code of Civil Procedure.

In the same context, we would like to note that, pursuant to a law adopted recently by the Parliament, on 12 June 2003, the new Code of Criminal Procedure will enter into force, and the enforcement of the new codes of procedure will form the legal basis for the enforcement of the new criminal and civil codes, adopted by the Parliament in 2002.

II. Law on the Amendment of the Law on the Social Protection of Invalids and War Veterans

ADEPT Comment: This amendment provides for the inclusion of individuals who worked as civilian employees in the army during the WW2 in the category of individuals eligible for additional financial allowances. The annual cost of this law is estimated at 350,000 lei.

Although intended to enhance social protection of vulnerable people, the various amendments providing for additional social benefits and additional beneficiaries have been launched and approved during the electoral period. This can be explained through the desire to stimulate the turnout of the most disciplined electorate - the pensioners and veterans, as well as to influence their votes in favour of the current government who has been very active lately in raising these voters' social benefits.

At the same time, the adoption of new budget expenses prompts concern among the international financial bodies, which have repeatedly warned against the lack of real sources to fund these populist initiatives, especially that foreign funding has not been approved yet.

Experts say the government should also take account of the fact that once raised, it will be difficult to lower the value of social allowances and aid, for, pursuant to constitutional norms, a right that is gained may not be reversed or diminished save in exceptional circumstances.

III. Law on Compensating the Difference in Payments for Electricity and Gaz by Residents of Some Settlements on the Left Bank of Dniestr River

ADEPT Comment: Through this law, the locality Copanca has been added to the list of villages whose residents are eligible for compensation of the difference in payments. Earlier, via the Law no 1435 of 7 November 2002, the Parliament ruled that by the time the consequences of the Transdnistrian conflict are removed, nominal compensations will be paid to residents of villages (communes) Cocieri, Pirita, Cosnita, Dorotcaia and Molovata Noua, situated on the left bank of Dniestr River, to cover the difference between the fees on electricity and gas approved by the National Agency for the Regulation of Energy of Moldova and those fixed by the administration in Tiraspol.

The compensations shall be paid on a monthly basis:

- a. for electricity, according to the data shown on meters, but not for more than 60 kWh per meter per month;
- b. for natural gas:
 - used to heat houses and for cooking, from individual sources, according to the data shown on meters, but not for more than 300 cubic meters per month per family, during the heating period (5 months);
 - used by gas stoves, 8 cubic meters of gas per month per family, during the rest of the year (7 months).

The payment of compensations to beneficiaries will be made through the budgets of respective villages (communes) from the state budget transfers of special destination.

IV. Law on the Amendment and Completion of the Law on 2003 State Budget

ADEPT Comment: Via this law, the Parliament has decided to allocate 3 million lei to fund the functioning of 44 state notaries, which are to be established following the new law on notaries. It is expected that the same amount will be earned into the state budget by the notaries who will have the status of remunerated state employees.

It needs to be noted that the issue of increasing budgetary expenditure related to the application of the new law on notaries was raised when the law was adopted. Moreover, additional budget spending in exchange for some expected revenues is problematic given that the income raised by state notaries will be much below that of private notaries. In the long run, this could compromise the very idea of establishing state notaries.

V. Decision on the Appointment of Some Judges to the Supreme Court of Justice

ADEPT Comment: Via this decision, at the proposal of the Supreme Council of Magistrates, the Parliament decided to appoint to the Supreme Court of Justice some judges who had previously worked with the Court of Appeals, which is to be abolished soon pursuant to the reform of the judicial system. According to the amendments operated earlier by the Parliament, the judges of the Court of Appeals are to be either promoted to the Supreme Court of Justice or maintained at the new Court of Appeals that is to be created following the re-organisation of the Tribunal of the Chisinau Municipality.

VI. Law on Amending the Law on Citizenship

ADEPT Comment: Via this law the Parliament adopted the amendments to the Law on Citizenship intended to bring it in line with the constitutional provisions that had abolished the interdiction to hold double or multiple citizenship. Thus, the law establishes expressly that the acquisition by a Moldovan citizen of the citizenship of another state does not involve losing the Moldovan citizenship.

The law also provides that the individuals who had previously held Moldovan citizenship may recover it and at the same time retain their current foreign citizenship.

VII. Law on the Amendment of the Law on Education, adopted in the first reading

ADEPT Comment: The proposed amendments refer to the following:

- lyceum education will be organised into: a) theoretical lyceums with one or several specialisation and b) secondary schools;
- the specialised secondary education will be carried out in secondary schools, for a duration of two to four years, and will provide training in applicative professions. Eligible for secondary schools will be graduates of gymnasiums, general schools and lyceums.
- the diploma of specialised secondary education will grant the right to work and carry on education at higher education institutions, where the duration of studies will be one year shorter through the equivalation of subjects studied at secondary schools.

- teachers in specialised secondary schools will be: - social teachers at student halls of residence; - crafts-instructors; - psychologists; - methodists and teachers in specialised secondary education.

This draft has aroused controversial debates among the opposition and the parliamentary majority.

Parliament Activity during 9-13 June 2003

17 June 2003

During this period, the Parliament heard the Government report on the implementation of the 2002 plan of activities, as well as the Finance Ministry report on the execution of the 2002 state budget. The parliamentary majority has appreciated as satisfactory the results achieved by the Government last year, and the opposition representatives regarded the presented figures as blown up, the economic success being considerably undermined by the increase in prices and the inefficiency of the economic policy of the executive.

Apart from the political problems, a number of legislative acts have been examined, the most important being in the field of education.

I. Decision on determining the strategic priorities for the development of science

ADEPT Comment: The adopted Decision obliges the Government, together with the Academy of Science and the Supreme Council for Science and technological Development to submit to Parliament proposals on drafting the strategic priorities for the development of science in Moldova.

The need to set such priorities has been determined by the increase in the number of PhD projects and the lack of theoretically founded and practically applicable research. Via this Decision, the Parliament decided to speed up the process of enhancing the scientific field and capitalise on the current scientific potential.

The Decision was adopted regardless of the fact that in the field of scientific research there are already a number of legislative acts, of which the most important are the following:

1. **Law no. 557-XIV of 29.07.99 on State Policy on Research and Development**, which regulates the development and promotion of state policy in the field of scientific research and technological development, as well as the relations between the subjects of research and development, the public authorities and the beneficiaries of the results of the activity in this sphere, defines the role of the state in encouraging research and development as a national priority for sustainable economic development, better welfare and higher quality of life.
2. **Decision of Parliament no. 1401-XV of 24.10.2002 for the Adoption of the List of Priority Fields of Research and Development for 2003-2010, funded from the state budget**, whereby the following priority fields of research and development:
 - a. Fundamental research in mathematics, real, technical, economic, social and humanistic sciences.
 - b. Sciences of life and human health.
 - c. Agricultural science and food security.
 - d. The relaunch and social-economic development through innovation and technological transfer.
 - e. New materials and advanced technologies.
 - f. Energetic systems, alternative sources of energy, the efficient processing and utilisation of energy.
 - g. Information technologies, electronics and communications.
 - h. The functioning of ecosystems, biodiversity and rational use of natural resources.
 - i. The historical and cultural patrimony of Moldova.

By adopting this new paper, the deputies qualified their own decision adopted a year ago as imperfect and including too general provisions, and requested the specialised panel to make a list of Government suggestions on enhancing the field.

II. Law on the Amendment of the Law on Education

ADEPT Comment: As compared to the text adopted [in the first reading](#) the deputies put forward a series of amendments, whereby they specified the terms of studies and the conditions for admission at secondary schools, and they established the method of appointing the directors of private education institutions (by founders, in coordination with the Ministry of Education).

It needs to be reminded that upon the adoption in the first reading of these amendments, many deputies regarded them as inopportune and likely to disturb the process of secondary and special education.

III. Law on the Amendment of the Nomenclature of Specialities for the Training of Higher Education Personnel

ADEPT Comment: Via this law, the Nomenclature has been added the following profiles and specialities: "Bioengineering", "Applied bioengineering", "Cellular biology and biotechnology" and "Biomedicine".

IV. Report on the Execution of the 2002 State Budget

ADEPT Comment: According to the report, the state budget was executed at in terms of revenues in the amount of 3,371,187,800 lei and in terms of expenditure in the amount of 3,555,603,500 lei, and registered a deficit of 184,415,700 lei.

Upon the examination of the report, it was noted that the commercial deficit has increased and that this trend has persisted over the past years and that the imports have exceeded exports by dozens of millions of US dollars.

Also, the shortage of means allocated for capital investments was noted, as well as the unsatisfactory utilisation of the few means allocated from the budget for that purpose.

Among the main tasks of the Government and the Ministry of Finance in terms of budget execution, the need to increase returns from domestic taxes, enhance financial discipline and abolish fiscal evasion was stated.

V. Law on Cancelling the Debt of the joint Stock Company "Moldova-Gaz" to the State Budget

ADEPT Comment: Via these amendments, it was determined that the VAT will not apply on the imports and supplies of natural gas by "Moldova-Gaz" to "Tiraspoltransgaz" Ltd., which does not have any relation to the budget system of Moldova.

Also, the debt of "Moldova-Gaz" to the State Budget on VAT for gas imports during 2000-2002 and later supplied to "Tiraspoltransgaz" have been cancelled. The amount of "Moldova-Gaz" debts is estimated at over 90 million lei and was not paid by the economic agent based in Transdnistria because it had made all payments directly to the Russian "Gazprom", which owns the majority package of shares of "Moldova-Gaz".

It is to be reminded that recently the deputy chairman of "Gazprom" showed discontent with the activity of the Moldovan enterprise and its losses and requested either to increase the tariffs on the gas supplied to Moldova or to reduce the transit tariffs for the gas transported through Moldova.

The Activity of Parliament during 16-20 June 2003

23 June 2003

During last week's plenary meetings, the atmosphere of debates was rather calm and the hottest debates referred to the new Law on Inspection before Expedition. At the same time, among the drafts examined by the Parliament, there have been a series of important drafts, whose socio-economic consequences will soon emerge.

I. Law on the Amendment of the State Budget for 2003

ADEPT Comment: This law was adopted in relation to the application of the territorial administrative reform and is intended to regulate the redistribution of resources allocated for the second tier administrative territorial units. At the same time, expenditure rose by over 62 million lei, which are to be covered from the growing state tax and income tax payments by entrepreneurs.

For the moment, 62 million lei is the sum that is to be regarded as the first part of additional expenses for the application of the territorial administrative reform. Earlier, independent experts had estimated the overall cost of the reform at over 700 million lei.

II. Law on the Amendment of the Budget of Social Insurance

ADEPT Comment: This law provides for the necessary means for the implementation of some legislative acts such as:

- raising the monthly benefits payable to some pensioners who are residents of the territorial administrative units on the left bank of Nistru;
 - indexation of pensions starting 1 April 2003;
 - enhancing the fund for labour remuneration and, respectively, the accumulated contributions;
 - the partial maintenance of youth sports school;
 - enhancing, at the account of the extra income, the reserve fund of the social insurance budget, which is to increase up to 150 million lei etc.
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III. Law on the Amendment of the Law on the Repatriation of Currency Means

ADEPT Comment: This law derogates from the general principles and provides that the term of repatriation of currency means for contracts of purchase of seeding vine material may be increased to 18 months of the date of conclusion of the contract.

This derogation has been necessary because the process of purchase of such material is usually a very long one, and it needs to be contracted in advance, with an advance payment.

IV. Law on the Amendment of Some Laws on Entrepreneurship

ADEPT Comment: This law has introduced a number of changes and additions to the laws regulating the entrepreneur activity, in order to improve the system of state and fiscal registration of economic agents.

In particular, the law provides for the following:

- the obligatory nature of publishing in the Official Monitor of notifications on changes in the name of the enterprise or payment sanctions of damage/interests;
 - the procedure of determination by courts of the liquidator of the enterprise in the event of legal liquidation;
 - the method of registration or suspension of the activity of an enterprise or organisation;
 - the simplified procedure of excluding enterprises and organisations from the state registry etc.
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V. Conception on the Orientation and Training of Human Resources

ADEPT Comment: The conception adopted by the Parliament determines the aims, tasks, principles and fundamental directions of state policy on the efficient use of human resources.

The conception includes several chapters, as follows:

- general provisions;
 - aims, objectives, tasks and basic principles;
 - directions, methods and basic elements of the professional orientation and psychological support regarding career orientation and professional training;
 - legislative, normative, organisational and didactical support;
 - funding of the national system of orientation and professional training;
 - management of the national system of orientation and professional training;
 - stages of application of the conception.
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VI. Draft Law on Inspection before Expedition, adopted in the first reading

ADEPT Comment: Earlier, following long and controversial debates, the deputies had voted in several readings a new law on inspection before expedition, which provided for at least two companies to be selected through competition, the list of good to be subject to inspection to be compiled by the Government, and conflicts to be settled according to current civil and economic laws.

That law was rejected by the International Monetary Fund that found it to be running counter to the memorandum of assistance to the Republic of Moldova and, implicitly, a major condition for resuming foreign funding to our country. The dragged out solution of the problem has already resulted in a delay in granting Moldova the ordinary SAC-III instalment due in June. Should the IMF conditions be met and the inspection carried out before 21 July 2003, the possibility of resuming funding to Moldova could be considered in September 2003 and new funding could be granted by the end of the year.

During the 19 June meeting, upon Government's insistence, the deputies cancelled the votes on the previous law on inspection before expedition and adopted a new law in the first reading. The following essential changes have been made to the latter:

- the contract is to be concluded with only one company;
- the list of goods to be subject to inspection is to be approved by the Government (thus, the political involvement of deputies will be avoided);
- conflicts between the Government and the company, as well as those between entrepreneurs and the company will be solved according to a special procedure, only when the provisions of a special package are breached and only by a special commission. Only in the event that all of the above requirements are met and a compromise has not been reached will the interested party bring the case to a national or international court.

The debates over this law have shown once again that the homogeneity of the majority faction is breaking up and ever more of its representatives oppose the proposals of the Government, disregarding the consequences that such positions might trigger for our country internationally.

VII. The Draft Law on the Cancellation of Financial Penalties and Sanctions, adopted in the first reading

ADEPT Comment: This law proposes that for the period of 1 April 2003 to 31 October 2003, the agricultural producers who have suffered losses as a result of natural calamities be not applied penalties to the sums that they owe to the consolidated state budget and the state social insurance budget.

Also, it is proposed that all penalties and 80% of fines as of 1 April 2003 be cancelled for the agricultural producers who had suffered losses as a result of the natural calamities of 2002 and winter-spring of 2003.

The law also proposes that the Government approve the list of agricultural producers who fall under these provisions.

VIII. Draft Law on the Completion of the Code of Commercial Maritime Navigation of the Republic of Moldova

ADEPT Comment: The law proposes that the right of navigation under Moldovan flags is granted to ships registered in the ship register and which satisfy the following requirements:

- are owned by physical or legal persons of the Republic of Moldova;
- are owned by physical or legal persons from abroad;
- are explored according to the ship renting or leasing contract.

Also, the law provides that the ship owners who have registered their ships with the ship register be exempted from paying fees and taxes according to current laws.

Activity of Parliament during 23-27 June 2003

3 July 2003

During this period, the Parliament examined and adopted a series of legislative acts primarily aimed at fulfilling the commitments to the international financial institutions. In addition, the Parliament heard the report of the Governor of the National Bank on 2002.

I. Law on Inspection before Expedition

ADEPT Comment: As [mentioned earlier](#), despite the substantial opposition from the deputies, the Government succeeded in persuading the parliamentary majority to vote for the law on inspection before expedition i.e. for the draft proposed by the Government and previously negotiated with the IMF.

According to this law, the "inspection before expedition" refers to the totality of actions of control of the quality, quantity, price, financial conditions and customs classification of goods on the territory of the exporting country.

Within less than one month the Government will have to select a company with the right to carry out the inspection before expedition. The selected company will have to open in Moldova an office with the status of legal entity. The requirements with regard to the inspection services will be set out in an agreement that will be concluded between the Government and the company. The agreement will include a number of mandatory clauses: - the contracting parties; - the object and aim of providing services; - the obligations of parties; - the method of provision of services; - the terms of conclusion, duration and termination of the agreement; - causes of force majeure; - settlement of conflicts etc.

The Government will also have to adopt the rules of carrying out the inspection, its regulation, the methodology of calculation and the amount of payments for the inspection services.

The last IMF mission to Moldova decided that funding to Moldova would be resumed if the inspection before expedition was applied by 21 July 2003. Considering the short term, one can assume that the Government will not look for a new company for these services but will hire "SGS" Company, which have catered these services to date.

One of the problems that might arise upon the implementation of the law and of the inspection could be an eventual appeal to the Constitutional Court that had cancelled the obligation to carry out the inspection before expedition and that could rule again to the same effect. In case such a thing happens, especially interesting will be the reaction of the international organisations, which on the one hand insist that their recommendations are applied and, on the other, demand from our authorities to respect justice and the rule of law, in particular with regard to the execution of decisions of all judicial bodies (all the more so of the constitutional ones).

II. Law on the Application of Mandatory Health Insurance

ADEPT Comment: The application of mandatory health insurance is another requirement of the international financial organisations, but in this sense the Moldovan authorities have managed to secure a series of delays and even the permission to apply a pilot project, for the first time in the modern history of the country.

The law provides for the application of mandatory health insurance in the district Hincesti, starting 1 July 2003. The insurance will be paid by:

- the legal entities based in the district Hincesti and their employees;
- the authorities of central and local administrations - for working individuals who reside in district Hincesti;
- notaries and lawyers who work in the district;
- physical persons who live in the district and fall under the jurisdiction of the Law on the Amount, Method and Terms of Payment of Mandatory Health Insurance, etc.

The value of the contribution will be of 2 percent to be calculated from the salary, bonuses and other forms of retribution (for the employees of legal entities, notaries and lawyers).

The value of fixed contributions (for other categories) is set at 170 lei.

The total amount of means that are to be accumulated is estimated at 14 million lei. If the project goes well, then the law will be applied nation-wide starting 1 January 2004.

The problems that might arise upon the application of the law might be the changes in the addresses of some firms which would continue to work in the Hincesti district but would register in other places. Another problem could be the decrease in the salary of state employees, who might protest against the new tax and ask raises equal to the respective quantum (considering that recently some trade unions have demanded raising salaries of state employees by 100 percent, the fight for the 2 percent might be even tougher).

III. Law on Cancellation of Financial Penalties and Sanctions

ADEPT Comment: Via this law it was established that the agricultural producers who suffered losses as a result of the natural calamities of 2002 and 2003 would be exempted from paying penalties for debts to the budget and would not be penalised or fined for late payments of taxes.

The Parliament, through this law, is trying to help the agricultural producers. However, due to this summer's drought, more and more producers have turned to the authorities for full exemption from the land tax, which would be the only real help the farmers can get this year.

The Government cannot cancel the taxes because the tax returns stipulated for in the budget amount to a huge sum and there is no way other means could be found to cover them this sum in the near future. In addition, the international financial organisations do not allow for exemptions because the budget already has a considerable deficit, which no one knows from which sources it could be paid for.

IV. Law on the Methodology of Calculation of Payments for Notary Services

ADEPT Comment: This law is intended to reduce the fees on notary services by state notaries. According to the information presented to the legislative body, 50% cuts will be operated on the fees for a series of services, which will be of great benefit for the low-income categories.

At the same time, however, it is planned that starting 2004, for transactions on fixed assets the notary fees will be calculated according to the market price of the fixed asset and not the price estimated in the documents of the cadaster body. Thus, in Chisinau Municipality and in other big cities, really complicated situations might arise, such as when for losing ownership or inheriting a house it will be necessary to pay huge taxes. As a result, the private notaries will have the chance to lower the fees below the ones set by the state notaries and thus boost their earnings.

ADEPT will continue to monitor the situation with regard to this issue and will soon publish a detailed comment on this Law.

V. Decision on the Report of the National Bank of Moldova

ADEPT Comment: According to the National Bank report, last year's economic growth was: in the US - 2.4 percent, average inflation of 1.6 percent; in the Eurozone - 0.8 percent, average inflation of 2.2; - in the CIS countries - 4.6 percent; - in Romania - 4.7 percent, average inflation of 17.8. In 2002, Moldova registered a 7.2 percent GDP growth, and current consumption prices increased slowly by 4.4 percent, while prices on industrial production grew by 6.7 percent.

Upon hearing the National Bank report, the Parliament adopted a decision whereby the National Bank was tasked to help enhance the banking system and bank services, as well as to work with the Government and the commercial banks in order to improve the banking climate, in particular with a view to lower the interest rates on loans to economic agents.

The Parliament charged the Government to attract local and foreign investors and foster the judicial system i.e. co-operation with the banks in the procedures of granting credits and paying them back.